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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,114	06/13/2001	Sundeeep M. Bajikar	219.40068X00	3214

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Kenyon & Kenyon
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Washington, DC 20005-1257

EXAMINER

THOMAS, SHANE M

ART UNIT	PAPER NUMBER
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2186

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/879,114

Applicant(s)

BAJIKAR, SUNDEEP M.

Examiner

Shane M. Thomas

Art Unit

2186

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 23 May 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 19 and 20.

Claim(s) objected to: 6, 7, 9, 13, 14 and 16-18.

Claim(s) rejected: 1-5, 8, 10-12 and 15.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please refer to the attached sheet for the Examiner's explanation.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Continued from element 11. The Examiner agrees with the Applicant's argument (page 9, ¶3 - page 10, ¶2) regarding the mis-characterization of the Gushiken reference, and as such, the Examiner further agrees that Gushiken does not specifically teach a method "to discern an unstable condition from a stable condition." The Examiner has relied upon the prior art reference of Okuyama to teach such a method.

Regarding the Applicant's argument on page 10, ¶4 - page 11, ¶2, Gushiken does in fact state that it is possible to prevent transmission from the buffer memory to the hard drive to prevent damage from vibrations - in ¶86. Paragraph 86 teaches that when the computer is placed in a stable condition, a request to transfer data from the buffer memory to the data processing unit (shown in figure 2B) occurs. Once this transfer occurs to the data processing unit, ¶83 teaches that the data is then sent to the hard drive. Gushiken additionally states in ¶9 that vibrations may occur while carrying the mobile computer (defined as an unstable condition in ¶109 of Gushiken).

Regarding the Applicant's argument on page 11, ¶¶3-5, Gushiken teaches in ¶85 (not ¶84 as previously mentioned) that it is possible to store all of the transferred information into the buffer memory as long as the amount of information does not exceed the [predetermined] capacity of the buffer (and still further in ¶109).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been apparent to one having ordinary skill in the art to have recognized the deficiency of Gushiken - specifically, the instance where the computer is being carried (unstable condition) AND the buffer is at capacity with system data (refer to Gushiken ¶85) AND more data is required to be sent to the mobile computer. Gushiken states in ¶86 that only when in a stable condition can data be transferred from the buffer to the hard drive 17 [via the data processing unit]; however, Gushiken does not state a method with which to detect such a stable condition (as admitted by the Applicant (page 10, ¶2). The motivation to combine the mobile system of Gushiken with the external sensor system of Okuyama lies in the knowledge generally available to one of ordinary skill in the art - specifically, that data loss could occur in the mobile system of Gushiken if the buffer's data capacity is full while more data is being sent to the mobile system and in need of being stored.

To summarize, Gushiken teaches in ¶87 that system data [from the buffer] can be reliably processed when the data processing unit is driven; --reliably processed-- is defined by Gushiken in ¶¶52-53 as being capable of being safely stored in the hard drive 17 of a mobile system without damaging the hard drive. Paragraph 9 states that vibrations can occur while carrying and that it is dangerous to operate the hard drive during an unstable condition. Finally, ¶109 states that only when the computer is in a stable state will the stored data in the buffer be able to be transferred (i.e. to the hard drive as taught in ¶83). Therefore, it would have been obvious to one having ordinary skill in the art that a necessary modification of the mobile system Gushiken in order to remedy the aforementioned deficiency of Gushiken as well as to have been able to have determined when a stable condition (no vibrations) is present in order to have been able to transfer the system data from the buffer to the hard drive 17 would have been obvious, given the Okuyama teaching. Okuyama teaches such a modification in ¶68 - a vibration sensor to detect the presence of sporadic vibrations over a designated time duration (i.e. inherently an interval duration in real time). In order for the detection of external shocks to result in the stoppage the data writing (as taught in ¶68), it is inherent that the vibration sensor of Okuyama generates a vibration signal that indicates the presence of sporadic mechanical vibrations (external shocks). Further, it is necessarily inherent in that the external [vibration] sensor must communicate with the storage controller 19 (figure 4) as the storage controller 19 is responsible for writing data to the magnetic disk 17 (please refer to ¶54) from the memory 15. If external shocks are detected, writing is stopped (i.e. access is limited) to thereby minimize the damages to the storage device 17, as shocks (vibrations) may damage a hard drive as discussed herein by Gushiken. The Examiner is considering a --chipset-- to be the combination of elements 18, 22, 19, and 21, of Okuyama; therefore, it can be seen that the --chipset-- has a --storage controller-- (element 19 as it controls access to the hard drive as previously discussed).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined the mobile system of Gushiken with the external sensor of Okuyama in order to have (1) been able to properly detect when the mobile system of Gushiken is in a --stable-- condition (i.e. when the laptop is not being carried) so that the system data contained in the buffer may be safely transferred to the hard drive 17 and (2) to have prevented an overflow scenario [where certain transferred data to the mobile system would have been lost due to a full buffer] by transferring the data stored in the buffer during a stable condition without having to wait for a user to drive the data processing unit (in order to transfer the data) as taught in ¶85. Thus the teaching of Okuyama would have allowed the modified system of Gushiken to have written data during a detected stable condition before the buffer became full to capacity, thereby freeing space in the buffer for the incoming system data [that otherwise would have overflowed the buffer].

The Examiner has discussed above every claim limitation of claim 1 that the Applicant has argued is not taught by either or both of the Gushiken or Okuyama references (page 12, ¶2).

It is apparent to the Examiner that based on the Applicant's specification and drafted claims, that the Applicant's invention differs from the prior art of record as upon the magnitude of the vibration detected, the Applicant's invention modifies the parameters of the individual write/read accesses in order to limit (but not inhibit completely) the amount of writing/reading during periods of extended vibrations. The prior art of Okuyama merely teaches entirely stopping the accessing (writing/reading) of data when external shocks are detected. While not commenting on the allowability of such an amendment to the claims, such a limitation is noted by the Examiner as not being taught by the prior art of record. Should such a limitation be added to the independent claims, the newly amended claims would overcome the 35 U.S.C 103(a) rejection under Gushiken in view of Okuyama.

 **HONG CHONG KIM**
PRIMARY EXAMINER

